

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
HARRISON DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

v.

Case No. 05-30003-001

CLIFFORD B. MARSTON

DEFENDANT

O R D E R

Now on this 17th day of April, 2007, comes on for consideration Defendant/Appellant, Clifford B. Marston's, Motion For Rehearing Of Order Signed April 4, 2007 Denying Defendant's Application To Proceed On Appeal In Forma Pauperis (document #63).

The Court has elected to treat this document as a motion for reconsideration of the Order in question.

The Court denied defendant's Motion To Proceed In Forma Pauperis Without Payment For Court Reporter's Transcript because the documents said to support it -- the declaration of Marston and his wife -- had not been received in the two months that had passed since the filing of that Motion. In the absence of any evidence, the Court had no basis to find Marston a pauper.

Marston's attorney, Joe Izen, now submits an Affidavit averring that he directed the Marstons, on three occasions, to complete affidavits regarding their financial status and file them with the Court. He further avers that "I assumed that the affidavit forms necessary to appeal in forma pauperis had been filed by the Marstons."

Izen further avers that "his office" called Mrs. Marston when he received the Order denying *in forma pauperis* status, and was informed that "the forms had been completed by Dr. Marston and

mailed to my office for filing with the Court." He states that the forms were not received in his office, and that "I can only conclude that the forms were lost in the inmate mail originating from Atlanta, Georgia." He asks for an additional three weeks to obtain the affidavits.

Izen's affidavit raises more questions than it answers<sup>1</sup>, but the Court is persuaded that a brief period of time should be allowed for Izen to obtain the Marstons' Affidavits, and for the Court to obtain a response from the Warden of the U.S. Penitentiary in Atlanta with regard to the allegation of lost inmate mail. The Court will, upon receipt of these documents, reconsider the underlying Motion.

**IT IS THEREFORE ORDERED** that **Defendant/Appellant, Clifford B. Marston's, Motion For Rehearing Of Order Signed April 4, 2007 Denying Defendant's Application To Proceed On Appeal In Forma Pauperis** (document #63) is **granted**, and defendant is allowed ten (10) additional days from the date of this Order to file affidavits in support of his Motion To Proceed In Forma Pauperis Without Payment For Court Reporter's Transcript, following which the Court will reconsider the matter.

**IT IS FURTHER ORDERED** that the Clerk of Court send a copy of this Order, as well as a copy of Defendant/Appellant, Clifford B. Marston's, Motion For Rehearing Of Order Signed April 4, 2007

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<sup>1</sup>The Court cannot but wonder (a) why Izen would direct his clients to file documents with the Court when they had paid him \$25,000 to handle the appeal; (b) how a party who has the wherewithal to pay \$25,000 for his attorney's services could be said to be indigent; and (c) what happened to the Affidavit of Mrs. Marston, who is not incarcerated and whose Affidavit could not reasonably be said to have been "lost in the inmate mail."

Denying Defendant's Application To Proceed On Appeal In Forma Pauperis (document #63), to the Warden Michael A. Zenk, U.S. Penitentiary in Atlanta, 601 McDonough Blvd. S.E., Atlanta, Georgia 30315.

**IT IS FURTHER ORDERED** that Warden Zenk furnish a response to the Court, within ten (10) days of his receipt of this Order, regarding the allegations about inmate mail contained in Defendant/Appellant, Clifford B. Marston's, Motion For Rehearing Of Order Signed April 4, 2007 Denying Defendant's Application To Proceed On Appeal In Forma Pauperis (document #63), along with copies of all financial Affidavits that have been completed for Marston by prison authorities.

**IT IS SO ORDERED.**

/s/ Jimm Larry Hendren  
**JIMM LARRY HENDREN**  
**UNITED STATES DISTRICT JUDGE**